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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

GIFFORDS LAW CENTER TO PREVENT	)	CASE NO. 18-cv-06171 DMR
GUN VIOLENCE,	)	
	)	<b>UPDATED JOINT CASE MANAGEMENT</b>
Plaintiff,	)	<b>CONFERENCE STATEMENT AND</b>
	)	<b>STIPULATION AND [PROPOSED] ORDER</b>
v.	)	<b>RESETTING CASE MANAGEMENT</b>
	)	<b>CONFERENCE AND RELATED DEADLINES</b>
UNITED STATES DEPARTMENT OF	)	
JUSTICE and BUREAU OF ALCOHOL,	)	
TOBACCO, FIREARMS, AND	)	
EXPLOSIVES,	)	
	)	
Defendants.	)	

1 Plaintiff, Giffords Law Center to Prevent Gun Violence, and defendants, United States Department  
2 of Justice (“DOJ”) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) (collectively  
3 “defendants”), jointly submit this Updated Joint Case Management Conference Statement pursuant to the  
4 Court’s July 31, 2019 Minute Order (ECF No. 37) and Stipulation and [Proposed] Order Resetting Case  
5 Management Conference and Related Deadlines.

6 1. Facts

7 Plaintiff has sued defendants for alleged violation of the Freedom of Information Act (“FOIA”), 5  
8 U.S.C. § 552. Plaintiff alleges that on July 25, 2018, plaintiff submitted two FOIA requests, one to ATF  
9 and another to DOJ. Both requests sought records from January 20, 2017 until the date the requests are  
10 processed, concerning communications between agency officials and 46 individuals, listed on Appendix A  
11 to the requests. Additional details regarding the scope of the FOIA requests are included in the parties’  
12 July 24, 2019 Joint Case Management Statement (ECF No. 35).

13 Plaintiff’s FOIA request to DOJ sought records from multiple offices within DOJ. Two of those  
14 offices, DOJ Civil Division and DOJ Office of Legal Counsel (OLC), have completed their responses.  
15 DOJ Civil Division sent plaintiff a final response stating that it did not locate any responsive records  
16 around November 28, 2018. On May 8, 2019, OLC sent plaintiff a final response, which included a  
17 production of 25 pages. DOJ Office of Information Policy (OIP) is responsible for processing FOIA  
18 requests for the remaining DOJ offices from which records have been requested: the Offices of the  
19 Attorney General (OAG), Deputy Attorney General (ODAG), Associate Attorney General (OASG,  
20 referenced in plaintiff’s FOIA request as AAG), Legal Policy (OLP), Legislative Affairs (OLA), and  
21 Public Affairs (PAO). At the initial case management conference on April 17, 2019, the parties reported  
22 that they had reached an agreement regarding narrowing of plaintiff’s FOIA request as it relates to those  
23 offices over which DOJ-OIP has responsibility. Pursuant to that agreement, DOJ-OIP confined its  
24 electronic search to an agreed upon list of custodians and agreed to complete its electronic search within  
25 4.5 months of April 17, 2019. DOJ-OIP completed its electronic search on September 3, 2019.

26 At the initial case management conference, defendant reported that ATF had conducted searches  
27 for records responsive to plaintiff’s request. At that time, ATF was in the process of reviewing records  
28 returned from those searches and anticipated completing its release of documents in two productions, on

May 10, 2019 and on June 10, 2019. Plaintiff received a release of 123 pages on May 10, 2019. On June 18, 2019, defendant informed plaintiff that due to issues ATF was experiencing with the program it uses to process records for release, the anticipated June 10, 2019 release was delayed. In the parties' June 26, 2019 Joint Status Report, defendant reported that ATF was working directly with the software provider and hoped to resolve the issues so that it could complete processing of records and release documents by July 10, 2019. ATF was unable to resolve its software issues and release documents by that date. ATF has now completed its response, including by producing an additional approximately 1,600 pages.

## 2. Production of DOJ Documents

DOJ-OIP's electronic search returned approximately 9,200 documents and 34,000 items ("documents" include individual emails, computer files, and calendar entries, while "items" additionally include attachments to emails), although it has not yet completed its review of the potentially responsive material.

As reported in the September 13, 2019 Joint Status Report (ECF No. 39), the parties have agreed on the following release schedule for DOJ-OIP:

- November 8, 2019: DOJ-OIP will make an interim response
- December 6, 2019, DOJ-OIP will make another interim response (DOJ-OIP will endeavor to process as many as possible of the remaining potentially responsive records by December 6, 2019)
- January 17, 2020: If DOJ-OIP cannot finish the response by December 6, 2019, it will make one final response on January 17, 2020

On November 8, 2019, DOJ-OIP completed its first interim response to plaintiff.

## 3. Vaughn Indices

As reported in the September 13, 2019 Joint Status Report, at this stage of the litigation, the parties are not currently in a position to determine whether *Vaughn* indices are necessary in this case and/or if the parties can agree to the preparation of narrowly tailored *Vaughn* indices, focused on certain claimed exemptions/records. ECF No. 39. Accordingly, the parties agreed that setting concrete deadlines for production of *Vaughn* indices is premature. *Id.* Instead, the parties agreed that DOJ-OIP should be allowed to complete its response, plaintiff should be provided time to review the released records, and the

parties should then be given an opportunity to meet and confer regarding (1) the need for and/or the scope of *Vaughn* indices in this case and (2) the timing of the production of any *Vaughn* indices needed in this case. *Id.* If the parties are unable to reach a mutually agreeable compromise at the end of the process described above, they can file an administrative motion requesting a status conference. *Id.*

Although the parties agreed that *Vaughn* indices are not necessary at this stage of the litigation, defendants agreed to produce draft search summaries to allow plaintiff to analyze the adequacy of defendants' searches. *Id.* Specifically, defendants agreed to produce draft search summaries as follows:

- October 31, 2019: ATF will produce its draft search summary
- December 6, 2019: DOJ-OLC will produce its draft search summary
- January 31, 2020: DOJ-OIP will produce its draft search summary (or on December 20, 2019, if DOJ-OIP's final response is provided on December 6, 2019)

*Id.* ATF requested, and plaintiff granted, a one-day extension on the deadline to produce its draft search summary, and ATF produced its draft search summary to plaintiff on November 1, 2019.

Because the parties continue to make progress cooperatively on the processing and production of documents, the parties HEREBY STIPULATE AND REQUEST that the December 4, 2019 case management conference be continued to February 19, 2020 at 1:30 p.m., which will allow defendants to finish their responses to plaintiff's FOIA requests and produce the agreed-upon draft search summaries in advance of the next case management conference.

DATED: November 25, 2019

Respectfully submitted,  
DAVID L. ANDERSON  
United States Attorney

/s/ Jevechius D. Bernardoni  
JEVECHIUS D. BERNARDONI\*  
Assistant United States Attorney  
Attorneys for Federal Defendants

DATED: November 25, 2019

Democracy Forward Foundation

/s/ Benjamin Seel

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Giffords Law Center to Prevent Gun Violence  
HANNAH SHEARER

Attorneys for Plaintiff

*\* In compliance with Civil Local Rule 5-1(i), the filer of this document attests that all signatories listed have concurred in the filing of this document.*

**[PROPOSED] ORDER**

Pursuant to the stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED that the further case management conference for this case is reset to February 19, 2020 at 1:30 p.m., with a further case management statement due by February 12, 2020.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE DONNA M. RYU  
UNITED STATES MAGISTRATE JUDGE